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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/092,895 | 03/08/2002 | Hiroshi Sukegawa | 220515US2S | 2724 |

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| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | |

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| EXAMINER | |
| POND, ROBERT M | |

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| ART UNIT | PAPER NUMBER |
| 3625 | |

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| NOTIFICATION DATE | DELIVERY MODE |
| 07/19/2007 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/092,895

Applicant(s)

SUKEGAWA, HIROSHI

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 27 April 2007 has been entered.

Response to Amendment

The Applicant amended claim 1. All pending claims 1, 3, 4, and 47-50 were examined in this non-final office action. The Applicant is reminded that twice-rejected claims are eligible for appeal.

Response to Arguments

Applicant's arguments filed 27 April 2007 have been fully considered but they are not persuasive. Further review of Spagna reveals additional subject matter that addresses the Applicant's claimed invention. Arguments pertaining to Spagna in combination with Ginter are moot. Ginter is withdrawn. Grounds of rejection address the Applicant's arguments pertaining to Spagna. Spagna discloses the end user player device logging pay-per-listen reproductions and

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reporting back to the clearinghouse system. Spagna discloses fast payment settlement with original content owners or proprietors based on immediate or periodic reporting. Please see below for further discussion.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 3, 4, and 47-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are:
Applicant's claimed invention can become indeterminate if the fixed membership fee used to pay for content is at least zero. If the first purchased content cost more than the fixed membership fee, then how does the system respond or respond on the second content purchase?

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3 - 5 and 47 -50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna (US 6,587,837).

Spagna teaches a music distribution system that specifies how digital content is prepared, securely distributed over point-to-point and broadcast infrastructures (e.g. cable, Internet, satellite, wireless), licensed to end user devices, and protected against unauthorized copying or playing (see at least abstract; col. 9, line 50-col. 10, line 2). Spagna teaches content providers or content proprietors as owners of original content, wherein original content comprises digital music purchased by an end user and downloadable over the Internet to the user's player device (see at least col. 1, lines 60-63; col. 12, lines 23-67; col. 14, line 48-col. 15, line 25). Spagna further teaches:

- registering at a server a music reproduction apparatus specified by a listener who pays a fixed membership fee; player application is authorized to receive download requests, uses private key to decrypt downloaded content; transaction data contains registered purchaser's name (please note: player application downloaded from one of plurality of electronic stores or from main public web site) (see at least col. 26, lines 50-57; col. 82, line 58-col. 94); pricing models: wholesale or retail purchase, pay-per-listen usage, subscription services (see at least col. 15, lines 38-43); time interval (see at least col. 10, lines 23-24). Although Spagna does not mention a listener paying a fixed membership fee, it would have been obvious to one of ordinary skill in the art at time the invention was made that subscription services as a form of payment model would require a fee

to be paid by the subscriber to typically cover a time interval the listener can access content or receive content from the service.

- receiving by a server a request to distribute music information from a music reproduction apparatus through a communication medium (see at least abstract, Fig. 5-7; col. 2, lines 58 -64; col. 28, lines 66-67; col. 82, lines 24-34);
- generating by said server a distribution file in which said music information requested and information concerning settings and conditions required for transmitting information from said music reproduction apparatus to said server are integrated; distributing by said server said distribution file to said music reproduction apparatus through said communication medium (see at least Fig. 13; col. 5, lines 9 - 42);
- receiving appreciation records through said communication medium by said server at regular intervals, the appreciation records including a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus; pay-per-listen, number or plays (see at least col. 4, lines 26 -32; col. 10, lines 23-24; col. 13, lines 31-37; col. 23, lines 50-52); player application accounts for each access to the downloaded content or pay-per-listen access (see at least col. 90, lines 7-10); use of the content by the player application is logged into a database such as the license database, or transmitted to the clearinghouse system (see at least col. 90, lines 11-65).

Spagna teaches all the above as noted under the 103(a) rejection and teaches a) subscription services payment model and suggests to one of ordinary skill in the art as noted above typically requiring a fee for subscription services, and b) providing fast settlement of payment to original content providers for content sold/distributed via electronic stores or other web sites through immediate or periodic sale reporting (see at least col. 2, line 65-col. 3, line 1; col. 11, lines 25-34; col. 14, lines 20-24). Although Spagna does not mention payment being drawn from the membership fee paid by the listener (i.e. subscription service fee), it would have been obvious to one of ordinary skill in the art at time the invention was made to ascertain that a subscription services payment model as taught by Spagna relies at least in part on fees received by a subscribing listener to pay for content being accessed by the subscribing listener.

- Regarding Claim 4, wherein said information concerning said settings and conditions includes an Internet IP address required for reporting said number of times of reproduction of said music information from said music reproduction apparatus to said server. Inserting or altering URLs to direct payment reconciliation to an account reconciliation house automatically by the purchaser without having to go through the electronic store for payment clearance (col. 4, lines 22 -23); user device reports pay-per-listen usage to clearinghouse system located on the network as previously noted above.

- Regarding Claim 47, wherein said nonvolatile semiconductor memory includes a flash memory, flash memory as a content delivery (see col. 72, lines 29-31); user device flash memory and copying content to nonvolatile memory (see col. 90, lines 31-50).
- Regarding Claim 49 and related claim 50, Inherent in Spagna are the structures necessary to permit communication using header and body format for content information and content distribution. For example, Spagna discloses communicating over the Internet which uses header/body format structure for communicating information between connected systems.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M. Pond
Primary Examiner
July 3, 2007